

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO FILE APPEAL

BY PRIVATE PARTY NO. 104 OF 2022

Abdul Hakim Nayab Ali Siddiqui

Age : 57 yrs, occ : business

R/o Pawan Nagar, Ranjangaon,

Taluka Gangapur District Aurangabad

Applicant

Versus

1. The State of Maharashtra

2. Afzal Khan Sherkhan Pathan

Age : major, occ : business

R/o Deolai, Aurangabad

Respondents

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Mr. Akshay Tilwe, Advocate for the applicant.

Mr. P.M. Kulkarni, A.P.P. for respondent No.1 - State.

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CORAM : SANDIPKUMAR C. MORE, J.

Dated : 4th November 2023

Order :

1. The applicant/complainant is seeking leave to challenge the judgment and order dated 03.08.2022 passed by the learned Judicial Magistrate, First Class (Court No.14), Aurangabad, whereby respondent No.2/original accused has been acquitted of the offence punishable under Section 138 of the Negotiable Instruments Act (for short, "N.I. Act").

2. Heard rival submissions. Also perused documents on record.

3. From the judgment itself it appears that the applicant and respondent No.2 were having friendly relations and out of those relations, the applicant had given an amount of Rs. 70,000/- in cash to respondent No.2 on 02.01.2017 as the respondent No.2 was in need of money on account of illness and kidney disease of his wife. Admittedly, the said cheque got dishonoured and despite receipt of statutory notice, respondent No.2 failed to pay the cheque amount. On the contrary, from the statement under Section 313 of the Code of Criminal Procedure the defence of respondent No.2 appears that there was no transaction between himself and the applicant and that the applicant in fact misused the cheque in dispute which was actually lost by him.

4. The record shows that there were incidents to infer that there were no friendly relations between the applicant and respondent No.2 since there was already dispute between them on account of purchase of plot and that the applicant was under impression that the respondent No.2 had in fact involved him in R.C.C. No. 1339/2015 under Sections 420, 354 of the Indian Penal Code and under the provisions of Anti-Superstition and Black Magic Act. Moreover, it also appears from the record that the applicant himself stated in

his cross-examination that he paid the amount of disputed cheque to respondent No.2 in cash and in form of currency notes of denomination of Rs. 500/- and Rs. 100/-. He has stated that those currency notes of Rs. 500/- were old and given on 02.01.2017. It is significant to note that by that time the Government of India had already declared demonetization policy which was to be implemented from 08.11.2016 in India. Thus, the contention of the applicant that he paid cheque amount in form of old currency notes of denomination of Rs.500/- raises suspicion about the actual transaction. Moreover, the applicant also did not examine the persons in presence of whom the amount of Rs. 70,000/- was given to respondent No.2/accused. Therefore, considering all these aspects, it appears that respondent No.2/accused has succeeded in rebutting presumption under Section 139 of N.I. Act by bringing the aforesaid circumstances on record. Thus, it appears that the learned trial Court has rightly appreciated the circumstances on record and acquitted respondent No.2/accused. Therefore, no interference is required in the impugned judgment and accordingly the application stands rejected.

(SANDIPKUMAR C. MORE, J.)